



AGENDA TITLE: Authorize City Attorney to Issue "Comfort Letter" to Bank of the West in Connection with the Lease of Property at 229 South School Street (CA) **MEETING DATE:** May 7, 2008 City Council Meeting PREPARED BY: City Attorney's Office **RECOMMENDED ACTION:** Authorize City Attorney to Issue "Comfort Letter" to Bank of the West in Connection with the Lease of Property at 229 South School Street. **BACKGROUND INFORMATION:** The Bank of the West site potentially overlies two PCE/TCE contamination plumes, the Central Plume and the Northern Plume. However, investigation to date by the City and other defendants has uncovered no evidence that the site contributed to the contamination. The Rosa Meissner family, owners of the site are in negotiations to renew the lease to the Bank of the West site. The Bank is concerned about the potential for the City to pursue recovery against them upon their lease. This concern could be allayed through the issuance of a "Comfort Letter" which would with certain qualifications indicate the City's determination not to pursue the Bank or their successors. Based upon my understanding that the Council does not desire to expand the litigation and the lack of any evidence that this site contributed to the contamination, I recommend the Council authorize me to issue a comfort letter in the form attached hereto. FISCAL IMPACT: N/A **FUNDING AVAILABLE:** N/A Approved: Stephen Schwabauer City Attorney

Blair King, City Manager

APPROVED:

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JANICE D. MAGDICH Deputy City Attorney

D. STEPHEN SCHWABAUER City Attorney



May 8, 2008

Via Facsimile and Mail

Blake Wettagel, Esq. Snell & Wilmer 600 Anton Boulevard, Suite 1400 Costa Mesa, CA 92626-7689

Re: 229 S. School Street, Lodi, CA

Dear Mr. Wettagel:

Rosa Meissner ("Meissner") owns property located at 229 S. School Street in Lodi situated within the Lodi Central Plume Area ("CPA"). The CPA is a groundwater plume containing Tetrachloroethene (PCE). Meissner and her predecessors in interest are not known to have contributed to the contamination in the CPA and the City of Lodi has entered into settlements with all of the parties who are known to have contributed contamination to the CPA, and has undertaken the obligation to clean up the contaminated soil and groundwater in the CPA.

This letter will confirm that the City Council authorized me at its meeting on May 7, 2008 to affirm that the City of Lodi will not pursue environmental claims against Meissner's tenant, Bank of the West or their successors or assigns under CERCLA, or under any other environmental liability theory (such as nuisance) for the contamination in the CPA. This statement of intent does not apply to liabilities that could arise if Bank of the West or its successors or assigns actually contribute at some future date to the contamination.

If you have any questions or concerns regarding this matter, please contact me.

Sincerely,

D. STEPHEN SCHWABAUER City Attorney

DSS/pn

cc: City Council

City Clerk